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Date 11/20/95  
Copies to District  
Burrhead

OCT -- 3 1995

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below:

You state that you are a school district offering Grades K through 12 in the community of [REDACTED]. You provide public education for [REDACTED] and the surrounding area. [REDACTED] is located in [REDACTED] County, [REDACTED]. You state that you were formed on [REDACTED]. Although you do not have a creating document per se, Section [REDACTED] of the [REDACTED] Code Annotated ([REDACTED]) provides that each school district in the state "is a body corporate and, as a body corporate, may sue and be sued, contract and be contracted with, and acquire, hold, use and dispose of real or personal property for school purposes, within the limitations prescribed by law." Under the provisions of Section [REDACTED] of the [REDACTED], the county superintendent of schools determines the annual amount of tax levy required for the district. Under Section [REDACTED] of the [REDACTED], the net general fund levy requirement so determined is reported on an annual basis to the county commissioners, whose duty is then to fix and levy on the taxable value of all real and personal property within the district all district and county taxation required to finance the annual budget. You also receive revenue from federal and state sources. As a public school, you exercise governmental enforcement powers with regard to the implementation of student truancy laws.

Section 501(a) of the Code, in part, provides for the exemption from federal income tax for organizations described in section 501(c).

Section 501(c)(3) of the Code, in part, provides for the exemption of organizations which are both organized and operated exclusively for charitable purposes as long as, among other

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conditions, no part of the net earnings inure to the benefit of any private individual or shareholder.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations states, in part, that if an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1) of the regulations states, in part, that an organization is not organized exclusively for exempt purposes unless its activities are limited to one or more exempt purposes.

Section 1.501(c)(3)-1(b)(2) of the regulations states that for purposes of this section, the term 'articles of organization' or 'articles' includes the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

Section 1.501(c)(3)-1(c)(1) of the regulations, in part, states that an organization will not be operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Rev. Rul. 60-384, 1960-2 C.B. 172, in part, provides that a wholly-owned state or municipal instrumentality which is a separate entity and which is organized and operated exclusively for purposes described in section 501(c)(3) of the Code may qualify for exemption from federal income tax under section 501(a) as an organization described in section 501(c)(3). A state or municipality itself, however, would not qualify as an organization described in section 501(c)(3) since its purposes are clearly not exclusively those described in section 501(c)(3). See for example Estate of John C. F. Slayton v. Commissioner, 3 B.T.A. 1343. It follows, therefore, that where the particular branch or department under whose jurisdiction the activity in question is being conducted is an integral part of a state or municipal government the provisions of section 501(c)(3) would not be applicable. For example, where a public school, college, university or hospital is an integral part of a local government, it could not meet the requirements for exemption under section 501(c)(3). Even though a wholly-owned state or municipal instrumentality may be a separately organized entity, it is not entitled to section 501(c)(3) exemption if it is clothed with powers other than those described in section 501(c)(3) because it would not be a clear counterpart of a section 501(c)(3) organization. For example, where an instrumentality exercises substantial regulatory or enforcement powers in the public interest, it will not qualify.

You have been unable to show that you are a separately incorporated legal entity or, even if not separately incorporated, that you have an existence separate and distinct from the governmental entity that you serve. This would operate to preclude exemption in two ways. First, you do not satisfy the organizational test because you are not a distinct and separate entity. Second, as a part of the governmental entity you would not qualify under the rationale of Rev. Rul. 60-384, which states that a municipality or an integral part thereof does not meet the requirements of section 501(c)(3) of the Code.

In addition, even if you were separately incorporated, your enforcement powers extend beyond the scope of the powers allowed to an organization described in section 501(c)(3) of the Code. Therefore, as stated in Rev. Rul. 60-384, you would not be a counterpart of a section 501(c)(3) organization and would not qualify for exemption under that section.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

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[REDACTED]

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service

[REDACTED]  
1111 Constitution Ave., N.W.  
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Signed [REDACTED]

[REDACTED]  
Chief, Exempt Organizations  
Technical Branch 2

[REDACTED]  
[REDACTED]  
9/21/95

[REDACTED]  
[REDACTED]  
[REDACTED]  
10-2-95